
**Massachusetts Department of Revenue
Division of Local Services**

**School Budgets, Special Funds
and
Other Finance Issues**



2006

Workshop B

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MUNICIPAL FINANCE AND ACCOUNTING

Frequently Asked Questions

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MUNICIPAL FINANCE AND ACCOUNTING

Frequently Asked Questions

SCHOOLS

1. Do local and regional school committees have to present their budget requests to municipal officials in a line item format?
2. Do municipal officials have to present the local or regional school committee's budget request to the legislative body?
3. If we include all school related expenses, such as employee benefits, transportation, capital outlay and debt service, in the school departmental budget can the school committee reallocate those monies to other school department purposes?
4. Can the regional school committee apply certified excess and deficiency (E & D) funds to reduce member assessments under an already approved budget? Can it use E & D to fund new operating or capital spending without member approval?
5. Can a school committee delegate its line item transfer authority to the superintendent?
6. Can the school superintendent approve bills and payrolls?

7. Can the accounting officer refuse to charge this year's school budget for bills related to goods and services ordered before June 30 that will mostly be used or performed next year?
8. Can we use this year's school department appropriation as a financing source for prior year school department unpaid bills?
9. Can the school committee prepay tuition for services to be provided to special needs students in one year from its prior year's budget? Utilities?
10. Can a school committee implement raises under a collective bargaining agreement without presenting the cost items to the legislative body first?
11. Can a school department run a revolving fund for school bus transportation? For pre-school or kindergarten? For parking?

TREATMENT OF MUNICIPAL REVENUES

GENERAL FUND REVENUES (Estimated Receipts)

Unrestricted revenues, including property taxes, state aid and other local revenues available to support general government operations. Revenue belongs to the general fund unless otherwise provided by statute. G.L. c. 44 §53.

SPECIAL REVENUE FUNDS

Particular revenues that are earmarked for and restricted to expenditure for specified purposes. Special revenue funds include receipts reserved for appropriation, revolving funds, grants from governmental entities and gifts from private individuals and organizations. Special revenue funds must be established by statute.

Receipts Reserved for Appropriation

Receipts from a specific revenue source that by law is accounted for separately from the general fund (segregated) and must be spent by appropriation.

Examples are:

Parking Meter Receipts	G.L. c. 40 §§22A - 22C
Sale of Real Estate	G.L. c. 44 §63
Waterways Improvement Fund	G.L. c. 60B §§2(i) & 4 G.L. c. 40 §5G
Sale of Cemetery Lots	G.L. c. 114 §15
County Dog Fund	G.L. c. 140 §172

Revolving Funds

Receipts from a specific revenue source that are accounted for separately (segregated) from the general fund and may be spent without appropriation to support the activity, program or service that generated the revenue. Examples are:

Arts Lottery Council Fund	G.L. c. 10 §58
School Rental Receipts	G.L. c. 40 §3
Parks and Recreation Revolving Fund	G.L. c. 44 §53D
Departmental Revolving Fund	G.L. c. 44 §53E½
Planning/Zoning/Health Boards Consultants Fund	G.L. c. 44 §53G
Anniversary Celebration Fund	G.L. c. 44 §53I
Student Athletic and Activity Fund	G.L. c. 71 §47
Wetlands Protection Fund	G.L. c. 131 §40 c. 43 §218 of the Acts of 1997 c. 194 §349 of the Acts of 1998

TRUST AND AGENCY FUNDS

Fiduciary funds segregated from the general fund to account for assets held by the city or town in a trustee capacity or as an agent for individuals, private organizations, other governmental units, etc. These include expendable trust funds, non-expendable trust funds, pension trust funds and agency funds.

Examples of Trust Funds are:

Scholarship Fund	G.L. c. 60 §3C
Local Education Fund	G.L. c. 60 §3C
Educational/Instructional Materials Trust Fund	G.L. c. 71 §20A
Cemetery Perpetual Care Fund	G.L. c. 114 §25

Examples of Agency Funds are:

Police Outside Detail Fund	G.L. c. 44 §53C
Student Activity Agency Account	G.L. c 71 §47
Sporting License Receipts	G.L. c. 131 §18
County Dog License Receipts	G.L. c. 140 §172

ENTERPRISE FUNDS

Funds segregated from the general fund to account for services financed and delivered in a manner similar to private enterprises where the intent of the municipality is that all costs, direct or indirect, of providing the goods or services be financed or recovered primarily through user charges. Where the service is not fully financed by fees, provides information about the level of general fund subsidy of the service. G.L. c. 44 §53F½ (formerly G.L. c. 40 §39K).

APPROPRIATED SPECIAL PURPOSE FUNDS

Statutory funds to account for allocation of general revenues by the appropriating authority to particular purposes. Examples are:

Reserve Fund	G.L. c. 40 §5A (cities) G.L. c. 40 §6 (towns)
Stabilization Fund (unrestricted)	G.L. c. 40 §5B
Pension Reserve Fund	G.L. c. 40 §5D
Unemployment Compensation Fund	G.L. c. 40 §5E
Conservation Fund	G.L. c. 40 §8C
Overlay (annual accounts)	G.L. c. 59 §25
Overlay Surplus (balances)	G.L. c. 59 §25

September 2006

LIST OF SPECIAL FUNDS AND CITATIONS

ENTERPRISE REVENUES

Water Surplus	G.L. c. 41 §69B
Landfill/Trash Collection Charges	G.L. c. 44 §28C(f)
Landfill Closure Reserve	G.L. c. 44 §28C (f)
Enterprise Funds	G.L. c. 44 §53F½
Electric Light Receipts	G.L. c. 164 §57

TEMPORARY FUNDS (Expire at Year's End)

Reserve Fund	G.L. c. 40 §5A (cities)
	G.L. c. 40 §6 (towns)
Free Cash	G.L. c. 59 §23
Overlay Surplus	G.L. c. 59 §25

REVOLVING FUNDS (No appropriation needed)

Arts Lottery Council Monies	G.L. c. 10 §58
School Lunch Fund	c. 548 of the Acts of 1948
School Rental Receipts	G.L. c. 40 §3
Performance Bond Forfeitures (Up to \$100,000 by local option)	G.L. c. 41 §81U
Expedited Permitting	G.L. c. 43D §6(b)
Police Special Detail	G.L. c. 44 §53C
Parks and Recreation Fund	G.L. c. 44 §53D
Departmental Revolving Fund	G.L. c. 44 §53E½
Planning/Zoning/Health Boards Consultants Fund	G.L. c. 44 §53G
Anniversary Celebration	G.L. c. 44 §53I
Affordable Housing Trust	G.L. c. 44 §55C
Culinary Arts Programs	G.L. c. 71 §17A
School Day Care Receipts	G.L. c. 71 §26C
Student Athletic and Activities	G.L. c. 71 §47
Student Activity Agency	G.L. c. 71 §47
Community Schools Programs	G.L. c. 71 §71C
Adult Continuing Education	G.L. c. 71 §71E
Use of School Property	G.L. c. 71 §71E
Non-resident Students' Tuition	G.L. c. 71 §71F
METCO Reimbursements	G.L. c. 71B §12
Vocational Education Programs	G.L. c. 74 §14B
School Choice	G.L. c. 76 §12B(O)
Law Enforcement Trust	G.L. c. 94C §47
Wetlands Protection Fund	G.L. c. 131 §40
	c. 43 §218 of the Acts of 1997
	c. 194 §349 of the Acts of 1998
Multi-community Yard Waste Program	c. 179 of the Acts of 1993
Millennium/Centennial Celebration	c. 59 of the Acts of 1998
School Bus Advertising Receipts	c. 184 §197 of the Acts of 2002

OTHER SPECIAL PURPOSE FUNDS (Held-over from Year to Year)

Self-Insurance Health Fund	G.L. c. 32B §3A
Stabilization Fund	G.L. c. 40 §5B
Pension Reserve Fund	G.L. c. 40 §5D
Unemployment Compensation Fund	G.L. c. 40 §5E
Ambulance Receipts Reserved	G.L. c. 40 §5F
Beach and Pool Receipts Reserved	G.L. c. 40 §5F
Golf Course Receipts Reserved	G.L. c. 40 §5F
Skating Rink Receipts Reserved	G.L. c. 40 §5F
Waterways Improvement Fund	G.L. c. 40 §5G
	G.L. c. 60B §2(i)
Conservation Fund	G.L. c. 40 §8C
Recycling Commission Fund	G.L. c. 40 §8H
Building Insurance Fund	G.L. c. 40 §13
Workmen's Compensation Fund	G.L. c. 40 §13A
Parking Meter Fees	G.L. c. 40 §22A
Off-street Parking Receipts	G.L. c. 40 §§22B & 22C
Commission on Disabilities Fund	G.L. c. 40 §22G
Bond Proceeds	G.L. c. 44 §20
State Highway and Water Pollution Funds	G.L. c. 44 §53
Insurance/Restitution Proceeds (Up to \$20,000)	G.L. c. 44 §53
Lost School Books/Industrial Arts Supplies	G.L. c. 44 §53
Grants and Gifts	G.L. c. 44 §53A
Sale of Real Estate Proceeds	G.L. c. 44 §63
Community Preservation Fund	G.L. c. 44B §7
Overlay	G.L. c. 59 §§25 & 70A
Local Education Fund	G.L. c. 60 §3C
Scholarship Fund	G.L. c. 60 §3C
Low Income Seniors and Disabled Tax Relief Fund	G.L. c. 60 §3D
Non-Resident Student Motor Vehicle Registration Fines Receipts Reserved	G.L. c. 90 §3½
Weight and Measure Fines Receipts Reserved	G.L. c. 98 §29A
Educational/Instructional Materials Trust Fund	G.L. c. 71 §20A
Cemetery Sale of Lots Fund	G.L. c. 114 §15
Cemetery Perpetual Care Funds	G.L. c. 114 §25
Spay and Neuter Deposits	G.L. c. 140 §139A
County Dog Fund	G.L. c. 140 §172

MODEL

MULTIPLE DEPARTMENTAL REVOLVING FUNDS ARTICLE AND VOTE

Article 5 - DEPARTMENTAL REVOLVING FUNDS AUTHORIZATION. To see if the town will vote to authorize revolving funds for certain town departments under Massachusetts General Laws Chapter 44 §53E½ for the fiscal year beginning July 1, 2006, or take any other action relative thereto.

Motion – That the town establish revolving funds for certain town departments under Massachusetts General Laws Chapter 44 §53E½ for the fiscal year beginning July 1, 2006, with the specific receipts credited to each fund, the purposes for which each fund may be spent and the maximum amount that may be spent from each fund for the fiscal year (if optional information included (shaded columns) then insert: the disposition of the balance of each fund at the end of the current fiscal year and restrictions on expenditures that may be made from each fund), as follows:

<u>Revolving Fund</u>	<u>Authorized to Spend Fund</u>	<u>Revenue Source</u>	<u>Use of Fund</u>	<u>FY07 Spending Limit¹</u>	<u>Disposition of FY06 Fund Balance (Optional)</u>	<u>Spending Restrictions or Comments (Optional)</u>
Hazardous Materials	Fire Chief	Fees charged to persons spilling or releasing hazardous materials	Training and special equipment needed to respond to hazardous materials incidents	\$15,000	New fund	
Title V Inspection	Board of Health	Septic system inspection fees	Salaries of inspectors or contractual services related to septic system inspections	\$40,000	Balance available for expenditure	
Teen Center	Teen Center Director	Teen center snack bar receipts, dance admission charges, activity charges and receipts	Expenses, supplies and contractual services to operate Teen Center	\$15,000	Balance available for expenditure	Fund may not be spent for salaries of more than one part-time employee. Full- time director salary funded in annual budget
Senior Citizens Bus	Council on Aging	Bus user fees	Salaries, expenses, contractual services to operate bus service to senior citizen housing developments and debt service on bus purchased for program	\$50,000	\$5,000 of balance available for expenditure, remainder to revert to General Fund	Fund may not be spent for salaries of more than two full-time employees, or any capital item over \$500
TOTAL SPENDING²				\$120,000		

¹ FY07 per department spending limit is \$100,000 (1% of FY06 levy of \$10,000,000)

² FY07 total spending limit is \$1,000,000 (10% of FY06 levy of \$10,000,000)

PREPAYMENT TO EDUCATIONAL COLLABORATIVES

General Laws Chapter 40 §4E

Section 4E. Pursuant to the provisions hereof, two or more school committees of cities, towns and regional school districts may enter into a written agreement to conduct education programs and services which shall complement and strengthen the school programs of member school committees and increase educational opportunities for children. The school committees shall collaborate to offer such programs and services, and the association of school committees which is formed pursuant hereof to deliver such programs and services shall be known as an education collaborative.

The education collaborative shall be managed by a board of directors which shall be comprised of one person appointed by each member school committee. Such person shall be either a school committee member or his designee or the superintendent of schools or his designee. Members of said board of directors shall be entitled to a vote according to the terms of the education collaborative agreement. The department of education shall appoint an individual to serve in an advisory capacity to the education collaborative board. Said individual shall not be entitled to vote on any matter which comes before the board of directors of the education collaborative.

The written agreement which shall form the basis of the education collaborative shall set forth the purposes of the program or service, the financial terms and conditions of membership of the education collaborative, the method of termination of the education collaborative and of the withdrawal of member school committees, the procedure for admitting new members and for amending the collaborative agreement, the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative and any other matter not incompatible with law which the member committees deem advisable. The agreement shall be subject to the approval of the member school committees and the commissioner of education.

Each board of directors of an education collaborative shall establish and manage a trust fund, to be known as an Education Collaborative Trust Fund, and each such fund shall be designated by an appropriate name. All monies contributed by the member municipalities, and all grants or gifts from the federal government, state government, charitable foundations, private corporations, or any other source, shall be paid to the board of directors of the education collaborative and deposited in the aforesaid Fund.

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to such collaborative. Such treasurer shall be authorized, subject to the direction of the board of directors of the education collaborative, to receive and disburse all monies of the trust fund without further appropriation. The treasurer shall give bond annually for the faithful performance of his duties as collaborative treasurer in a form approved by the department of revenue and in such sum, not less than the amount established by said department, as shall be fixed by the board of directors of the education collaborative. The board of directors of the education collaborative in its discretion may pay compensation to the treasurer for his services. No member of the board of directors of the education collaborative shall be eligible to serve as treasurer of said collaborative.

The treasurer of the education collaborative board of directors shall have the authority to make appropriate investments of the monies of the Education Collaborative Trust Fund consistent with the provisions of section fifty-four of chapter forty-four.

The board of directors of an educational collaborative shall have the authority to borrow money, enter into long-term or short-term loan agreements or mortgages and to apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, that the board of directors has determined that any such borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member municipalities. Such borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation, if any, of the educational collaborative and shall be consistent with standard lending practices.

The board of directors of the education collaborative shall have the authority to employ an executive officer who shall serve under the general direction of such board and who shall be responsible for the care and supervision of the education collaborative.

The board of directors of the education collaborative shall be deemed to be a public employer and have the authority to employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by said board of directors as an instructor of children with severe special needs, teacher of children with special needs, teacher, guidance counselor or school psychologist unless such person has been granted a certificate by the board of education under the provisions of section thirty-eight G of chapter seventy-one or section six of chapter seventy-one A or an approval under the regulations promulgated by the board of education under chapter seventy-one B or chapter seventy-four with respect to the type of position for which he seeks employment; provided, however, that nothing herein shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. A board of directors of an education collaborative may, upon its request, be exempted by the board of education for any one school year from the requirements of this section to employ certified or approved personnel when compliance therewith would in the opinion of the board constitute a great hardship.

The education collaborative shall be deemed to be a public entity and shall have standing to sue and be sued to the same extent as a city, town or regional school district. An education collaborative, acting through its board of directors, may enter into contracts for the purchase of supplies, materials and services, and for the purchase or leasing of land, buildings and equipment as deemed necessary by such board of directors.

A school committee of any city, town or regional school district may authorize the prepayment of monies for any educational program or service of the education collaborative, to the treasurer of an education collaborative, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

APPROVAL OF PAYROLLS

General Laws Chapter 41 §41

Section 41. No treasurer or other fiscal officer of any town or city shall pay any salary or compensation to any person in the service or employment of the town or city unless the payroll, bill or account for such salary or compensation shall be sworn to by the head of the department or the person immediately responsible for the appointment, employment, promotion, or transfer of the persons named therein, or, in the case of the absence or disability of the head of the department or of such person, then by a person designated by the head of the department and approved by the board of selectmen in towns, and by the mayor in cities, or by the city manager in cities operating under a Plan D or Plan E charter. A commission, committee or board of trustees in a city or town, including a city council, board of aldermen or common council in a city, may for purposes of this section designate any one of its members to make oath to a payroll, bill or account for salary or compensation of its members or employees. This provision shall not limit the responsibility of each member of any such body in the event of a noncompliance with this section.

TOWN BUDGETS

General Laws Chapter 41 §59

Section 59. The selectmen and all boards, committees, heads of departments, or other officers of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent improvements. They shall also prepare estimates of any income likely to be received by the town during the ensuing fiscal year in connection with the town's business or property intrusted to their care. The selectmen shall include in their estimates the salaries and expenses connected with their own office, and the salaries of all other town officers shall be included in the estimates for the office, department or branch of the public service of which they are in charge. The treasurer shall, in addition to his estimate of the amount required for the maintenance of his own office, prepare a separate statement indicating the amounts required for the payment of interest on the town debt and for the payment of such portions of the town debt as may become due during the ensuing fiscal year.

TREATMENT OF MUNICIPAL REVENUES

General Laws Chapter 44 §53

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

TREATMENT OF GIFTS AND GRANTS

General Laws Chapter 44 §53A

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district

without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

DEPARTMENTAL REVOLVING FUND

General Laws Chapter 44 §53E½

Section 53E½. Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay such wages or salaries and provided, further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine.

Notwithstanding the provisions of this section, whenever, during the course of any fiscal year, any new revenue source becomes available for the establishment of a revolving fund under this section, such a fund may be established in accordance with this section upon certification by the city auditor, town accountant, or other officer having similar duties, that the revenue source was not used in computing the most recent tax levy.

In any fiscal year the limit on the amount that may be spent from a revolving fund may be increased with the approval of the city council and mayor in a city, or with the approval of the selectmen and finance committee, if any, in a town; provided, however, that the one percent limit established by clause (4) of the third paragraph is not exceeded.

The board, department or officer having charge of such revolving fund shall report to the annual town meeting or to the city council and the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the legislative body and the chief administrative or executive officer, the total amount of receipts and expenditures for each revolving fund under its control for the prior fiscal year and for the current fiscal year through December thirty-first, or such later date as the town meeting or city council may, by vote determine, and the amount of any increases in spending authority granted during the prior and current fiscal years, together with such other information as the town meeting or city council may by vote require.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which a city or town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the annual town meeting or the city council and mayor or city manager in a Plan E city and in any other city or town the legislative body vote to transfer such balance to another revolving fund established under this section.

The director of accounts may issue guidelines further regulating revolving funds established under this section.

APPROVAL OF REGIONAL SCHOOL BILLS AND PAYROLLS

General Laws Chapter 71 §16A

Section 16A. The powers, duties and liabilities of a regional school district shall be vested in and exercised by a regional district school committee organized in accordance with the agreement. The committee shall choose a chairman and vice chairman by ballot from its membership. The vice chairman shall, in the absence of the chairman, exercise the powers and perform the duties of said chairman. It shall appoint a secretary and a treasurer who may be the same person, but who need not be members of said committee. The treasurer shall receive and take charge of all money belonging to the district, and shall pay any bill of the district which shall have been approved by the committee. The committee may appoint an assistant treasurer who need not be a member of the committee, and who shall, in the absence of the treasurer, perform his duties and shall have the powers and be subject to the requirements and penalties applicable to him. The treasurer and assistant treasurer shall be persons of ability and experience and may, by vote of the committee, be compensated for their services. A treasurer of a member municipality of the district shall be eligible for appointment as treasurer or assistant treasurer. The treasurer and assistant treasurer of the district shall be subject to sections 35 and 109A of chapter 41, to the extent applicable. A business manager, assistant superintendent for business or employee with title of similar import with responsibilities similar to those of a town accountant shall be subject to section 52 of said chapter 41 and shall not hold the office of treasurer or assistant treasurer or hold any responsibilities for the receipt or disbursement of money. If the office of secretary is vacant or if the secretary is absent or is unable to perform his duties because of disability, the committee may appoint a temporary secretary to hold such office and exercise the powers and perform the duties thereof until a secretary is duly appointed or the secretary who was disabled or absent resumes his duties. The committee may appoint a school building committee which shall have such powers and duties relative to the construction, reconstruction, remodeling, repair, expansion or equipping of school buildings or facilities as the committee determines.

The committee may establish a subcommittee of no less than three members for the purpose of signing payroll warrants and accounts payable warrants to allow for the release of checks; provided, however, that such subcommittee shall make available to the committee at the next meeting, a record of such actions of such subcommittee.

The committee shall solicit proposals and contract with an independent certified public accountant to perform an annual financial audit and make management recommendations, and shall receive the audit report in public session. Copies of the audit shall be provided within 10 days to the director of accounts and to the board of selectmen, town manager, mayor or city manager, as the case may be, in each member municipality.

APPROVAL OF REGIONAL SCHOOL BUDGETS

General Laws Chapter 71 §16B

Section 16B. The regional district school committee, by a two-thirds vote of all its members, shall annually determine the amounts necessary to be raised, after deducting the amount of aid such district is to receive pursuant to section sixteen D, to maintain and operate the district school or schools during the next fiscal year, and amounts required for payment of debt and interest incurred by the district which will be due in the said year, and shall apportion the amount so determined among the several municipalities in accordance with the terms of the regional school district agreement. The amounts so apportioned for each municipality shall be certified by the regional school district treasurer to the treasurers of the several municipalities within thirty days from the date on which the annual budget is adopted by a two-thirds vote of the regional district school committee, but not later than April thirtieth. The regional school district treasurer shall include in the certification to each municipality a statement setting forth the amount which the district is to receive under said section sixteen D for the ensuing fiscal year and the proportionate share of such aid for such municipality, the amount, if any, by which the unencumbered amount in the excess and deficiency fund, so called, of the regional school district at the end of the preceding fiscal year, as certified by the commissioner of revenue pursuant to section sixteen B1/2, exceeded five per cent of the regional school district's operating budget and its budgeted capital costs for the current fiscal year, and the proportionate share of any such excess in said fund by which such municipality's assessment for the current fiscal year was reduced.

The regional school district treasurer shall provide a copy of the adopted budget to the chairmen of the boards of selectmen, chairmen of the finance committees, mayors, presidents of the city councils and the treasurers of the several municipalities.

Notwithstanding any provision of law to the contrary, the superintendent of schools of a regional school district may, on matters relating to the regional school budget, address the membership at a city council meeting, a town meeting or a meeting of the town council in a municipality having a town council form of government in cities and towns within the regional school district when the regional school budget is being considered.

The members of a regional school district, including a vocational regional school district, may elect to reallocate the sum of their required local contributions to the district in accordance with the regional agreement; provided, however, that the total sum of their required contributions shall not be decreased. Election shall be by approval of all members of the district. Approval of each member shall be given by majority vote at an annual or special town meeting, in the case of towns, or by majority vote of the council, in the case of cities. The commissioner of education shall be notified upon the adoption of this section by this district. Nothing in this section shall be construed to affect the calculation of the members' required local contributions for any succeeding year as provided by chapter seventy of the General Laws.

The annual regional school district budget as adopted by a two-thirds vote of the regional school district committee shall require the approval of two-thirds of the local appropriating authorities of the member municipalities. The regional school district budget so approved shall be apportioned between or among the member municipalities and paid in accordance with the terms of the agreement.

In the event that the regional school district budget in a regional school district is not approved by at least two-thirds of the member municipalities as required by this section, the regional school district committee shall have thirty days to reconsider, amend and resubmit a budget on the basis of the issues raised. The amounts required to be raised on account of the regional school district budget shall be reapportioned between or among the member municipalities by the regional school district committee and a copy of the amended budget shall be provided, not later than seven days from the date the amended regional school district budget was adopted by the regional school district committee, to the chairmen of the boards of selectmen, chairmen of the finance committees, mayors, presidents of the city councils and treasurers of the member municipalities. With the approval of the commissioner of education, a regional school district committee may have an additional fifteen days within which to reconsider, amend and reapportion said budget. The respective amounts reapportioned between or among the member municipalities by the regional school district committee shall be recertified by the district treasurer to the treasurers of the member municipalities not later than seven days from the date the amended regional school district budget was adopted by the regional school district committee. Prior to the expiration of forty-five days from the date on which such budget was adopted by the regional school district committee, each member municipality shall hold a meeting of the local appropriating authority to act upon the appropriation of the budget so reapportioned and recertified to it. If the appropriating authorities of at least two-thirds of the member municipalities vote to appropriate the amounts so reapportioned and recertified to them, such budget shall be considered approved and shall be apportioned between or among the member municipalities and paid by them in accordance with the terms of the regional school district agreement. In the case of a regional school district having three or more members, if the appropriating authorities of more than one-third of the member municipalities vote not to appropriate the amounts so reapportioned and recertified to them, then the budget shall again be recommitted to the regional school district committee for action pursuant to this paragraph. In the case of a two-member regional school district, if the appropriating authority of either member municipality votes not to appropriate the amount so reapportioned and recertified to it, the provisions of the following paragraph shall apply.

The regional school district committee shall convene a special district-wide meeting open to all registered voters in both municipalities at which the amended regional school district budget, proposed by the regional school district committee, shall be considered. Such meeting shall be called pursuant to a warrant, under the hands of at least a majority of the regional school district committee, notice of which shall be given at least fourteen days prior to the date of such meeting. The warrant shall state the time, place and purpose of the meeting and shall be directed to the district secretary, who shall give notice by posting a copy in the city or town clerk's office and at least two other public places in each member municipality and who shall further provide notice by publishing a copy of said warrant in at least one newspaper in general circulation within the member municipalities. The boards of selectmen of the member municipalities in a joint meeting shall, by a majority vote of those present, appoint a town moderator or any other person acceptable to the boards of selectmen to act as moderator and the district secretary shall keep the record of such meeting. Approval of the regional school district budget shall require the affirmative vote of at least a majority of those present and voting thereon, by a counted vote. The regional school district budget so approved shall be apportioned between the member municipalities

and paid by them in accordance with the terms of the regional school district agreement. If, after submission of the budget, no agreement is reached as to a budget for the regional school district, the district shall notify the Department of Education of a lack of a budget and the commissioner, or his designee, shall certify an amount sufficient for the operation of the district and order the appropriation thereof in an amount not less than 1/12 of the total budget approved by the region in the most recent fiscal year. Similar sums shall be certified and appropriated for each successive month to insure the continued provision of services by the district until such time as a budget is adopted and approved by the regional committee and member towns in the manner otherwise provided herein. In the event a budget is not adopted by December first in any year, the department shall assume operation of the district and funds for same shall be deducted from local aid distributed to member towns.

A member municipality of a regional school district having three or more members need not hold a meeting of its local appropriating authority to act upon the appropriation of amounts reapportioned and recertified to it if it has previously voted to appropriate for the regional school district an amount equal to or greater than the amount so recertified to it, notwithstanding the provisions of the fifth paragraph of this section. A municipality that does not hold such a meeting prior to expiration of forty-five days from the date on which an amended budget was adopted by the regional school district committee shall be deemed to have voted to appropriate the amounts reapportioned and recertified to it.

At any time after the adoption of the annual budget, the regional district school committee may reduce the amount to be raised by assessment to the several municipalities and reapportion the reduced amount in accordance with the terms of the regional school district agreement for apportionment of costs. The regional school district treasurer shall recertify the amounts reapportioned to the treasurers of the several municipalities within thirty days from the date on which the regional district school committee votes to reduce the annual budget or assessments. If the recertification is made after the annual town meeting of a member town, the amount recertified shall be considered an amendment to the amount required to have been appropriated at that meeting without the necessity for further action by the town, and, if the annual assessment of taxes has not been made, the municipal assessors shall include only the amount so recertified in making the annual assessment of taxes under the provisions of section twenty-three of chapter fifty-nine.

For the purposes of this section, a vote or votes by a local appropriating authority to appropriate the municipality's apportioned share of the regional school district budget shall constitute approval of the annual regional school district budget; provided, however, that any municipality's apportioned share may not be increased in the same fiscal year without approval of the local appropriating authority.

The clerk of each member municipality shall, within seven days following a vote concerning a regional school district budget or apportionment, certify in writing to the treasurer of the regional school district the results of such vote by the municipality.

This section shall apply to all regional school districts established under the provisions of a special law, notwithstanding any contrary provisions in any such special law.

REGIONAL SCHOOL EXCESS AND DEFICIENCY FUNDS

General Laws Chapter 71 §16B½

Section 16B1/2. If the unencumbered amount in the excess and deficiency fund, so called, of a regional school district at the end of a fiscal year exceeds five per cent of its operating budget and its budgeted capital costs for the succeeding fiscal year, the amount in excess of the said five per cent shall be applied by the regional school district committee to reduce the amount to be raised by assessment on the member cities and towns in accordance with the terms of the agreement for apportionment of costs. The commissioner of revenue shall certify the unencumbered amount in the excess and deficiency fund, so called, of a regional school district, and the amount, if any, by which it exceeds five per cent of the district's operating budget and its budgeted capital costs for the succeeding fiscal year, at the end of each fiscal year and shall report such amount to the regional district school committee, the board of selectmen in each member town and the city council in each member city by December first of each year. The regional district school committee shall submit all information necessary to perform said certification to the commissioner of revenue at the close of each fiscal year but no later than October thirty-first. The regional school district treasurer shall recertify the amounts reapportioned to the treasurers of the several towns within thirty days from the date on which the district school committee votes to reduce the amounts to be raised by assessment. If the recertification is made after the annual town meeting referred to in the first paragraph of section sixteen B, the amount recertified shall be considered an amendment to the amount required to have been appropriated at that meeting without the necessity for further action by the town, and, if the annual assessment of taxes has not been made, the town assessors shall include only the amount so recertified in making the annual assessment of taxes under the provisions of section twenty-three of chapter fifty-nine.

This section shall be subject to the provisions of section thirty-four of chapter seventy-one and shall place no additional limitations on the budgetary authority of the school committee.

SCHOOL DAY CARE REVOLVING FUND

General Laws Chapter 71 §26A-26C

Section 26A. If the school committee of a town determines that sufficient need exists therein for extended school services for children, between three and fourteen years of age, of parents who are employed, and whose employment is determined by said committee to be necessary for the welfare of their families, said school committee, subject to section twenty-six B, and with the approval of the city council or selectmen may establish and maintain such services.

Section 26B. If said school committee, upon determination by it of sufficient need, votes that said services should be established by it in such town upon approval of the city council or selectmen, it shall submit in writing a plan of said services to the commissioner of education for his written approval; provided, that said extended school services proposed in

said plan shall consist of such care as shall be determined by standards established by said commissioner in consultation with the state department of public health and shall be operated by said school committee under the general supervision of said commissioner; and provided further, that said school committee shall establish as one of the rules of admission of any such child to the benefits of said extended school services that the parents of such child shall pay toward the cost of said services such sum as said school committee shall determine. For the purposes of clause (2) of section five of chapter forty, the establishment and maintenance of said extended school services shall be deemed to be included within the term ""support of public schools".

Section 26C. The commonwealth and the school committee of any town may accept funds from the federal government for the purposes of sections twenty-six A to twenty-six F, inclusive. The school committee of any town may receive contributions in the form of money, material, quarters or services for the purposes of said sections from organizations, employers and other individuals. Such contributions received in the form of money, together with fees from parents and any allotments received from the federal government for said purposes, shall be deposited with the treasurer of such town and held as a separate account and expended by said school committee without appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four.

SCHOOL APPROPRIATIONS

General Laws Chapter 71 §34

Section 34. Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

STUDENT ATHLETIC AND ACTIVITIES REVOLVING FUND

STUDENT ACTIVITY AGENCY FUND

General Laws Chapter 71 §47

Section 47. The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith. It may directly or through an authorized representative determine under what conditions the same may compete with similar organizations in other schools.

Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same in the buildings, yards and playgrounds under the control of the committee, or upon any other land which it may have the right or privilege to use for this purpose, and for the employment of experienced athletic directors to supervise said physical education, athletics, sports, games and play, shall be deemed to be for a school purpose. Expenditures by the committee for making special awards to pupils who have performed meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall also be deemed to be for a school purpose. Cities and towns may appropriate for the employment of coaches to supervise in public schools physical education, athletics, sports, games and play, and for the transportation and expenses of public school athletic teams, coaches, cheerleaders, bands and any other groups composed of public school pupils which bear the school name and are under the control of the school committee, within and without the commonwealth, to places where athletic contests or physical education, sports, games, play, musical festivals, competition or other events are held, and for the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands composed of public school pupils and bearing the school name and under the control of the school committee. All receipts by the committee in connection with the conduct of activities provided for under this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant, shall be deposited with the treasurer of such town or, in cases where the town is a member of a regional school district, with the treasurer of such district and held as a separate account and expended by said school committee without further appropriation, notwithstanding the provisions of section fifty-three of chapter forty-four. No moneys may be expended from an appropriation or from the separate fund authorized by this section except upon the approval of the school committee, or of the selectmen in towns and of mayors in cities, for travel to other states.

Notwithstanding the provisions of the preceding paragraph or section fifty-three of chapter forty-four, the school committee of a city, town or district may authorize a school principal to receive money in connection with the conduct of certain student activities and to deposit such money, with the municipal or regional school district treasurer, into an interest bearing bank account, hereinafter referred to as the Student Activity Agency Account, duly established by vote of the school committee to be used for the express purpose of conducting student activities. Interest earned by such Student Activity Agency Account shall be retained by the fund and the school committee shall determine for what purpose such earnings may be used. In addition to such Student Activity Agency Account, the

school committee may authorize the municipal or regional school district treasurer to establish a checking account, hereinafter referred to as the Student Activity Checking Account, to be operated and controlled by a school principal and from which funds may be expended exclusively for student activity purposes for the student activities authorized by the school committee. Such account shall be used for expenditures only and funds received for student activities may not be deposited directly into such account.

The school committee shall vote to set the maximum balance that may be on deposit in such Student Activity Checking Account. The principal designated to operate and control such Student Activity Checking Account shall give bond to the municipality or district in such amount as the treasurer shall determine to secure the principal's faithful performance of his duties in connection with such account. To the extent that the funds are available in such Student Activity Agency Account, funds up to the maximum balance set by the school committee shall be transferred from the Student Activity Agency Account through the warrant process to initially fund such Student Activity Checking Account.

Periodically, to the extent that funds are available in such Student Activity Agency Account, the municipal or regional school district treasurer shall reimburse such Student Activity Checking Account, through the warrant process, to restore the limit set by the school committee. The principal shall adhere to such administrative procedures as the municipal or regional school district treasurer or accountant may prescribe. There shall be an annual audit of the student activity funds which shall be conducted in accordance with procedures as agreed upon between the school committee and the auditor based upon guidelines issued by the department of education.

ORDERS FOR SCHOOL MATERIALS

General Laws Chapter 71 §49A

Section 49A. At any time after the annual appropriations for the ensuing fiscal year are made by a city or town or by all the member cities and towns of a regional school district, a school committee may order materials, supplies and equipment and may contract for services for the public schools which are chargeable against such appropriations, provided that no payment therefor shall be made prior to the commencement of said ensuing fiscal year.

USE OF SCHOOL PROPERTY

General Laws Chapter 71 §71

Section 71. For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational,

recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not apply to Boston.

PREPAYMENT OF SPECIAL NEEDS TUITIONS

General Laws Chapter 71 §71D

Section 71D. A school committee of any city, town, or regional school district may authorize the prepayment of tuition for a period not exceeding three months to any approved private school or approved program source which a student is attending under the provisions of chapter seventy-one B, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

USE OF SCHOOL PROPERTY FUND

General Laws Chapter 71 §71E

Section 71E. In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate accounts. The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or town may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.



April 7, 1997

David P. Trainor, Director of Administrative Services
Wachusett Regional School District
Post Office Place, 206 Worcester Road
P.O. Box 1097
Princeton, MA 01541-1097

Re: Town Meeting Warrant for Regional School Budget
Our File No.97-273

Dear Mr. Trainor:

This is in reply to your letter asking several questions about annual town meeting warrant articles relating to a regional school budget.

G.L. Ch.71 §16B, which governs the adoption of regional school budgets, does not expressly deal with the form or manner in which a regional school budget should be submitted to a town meeting. The section does expressly provide that where a regional school budget has been amended after having been defeated, member towns must hold a town meeting to consider the amended budget within forty-five days after its adoption by the regional school committee. A regional school superintendent is entitled to address a town meeting on the subject of the regional school budget. We think it is clear from these provisions that an annual town meeting must take up a properly certified regional school district budget. Moreover, no statute gives to a board of selectmen the power that G.L. Ch.44 §32 gives to a mayor to fix a ceiling on the maximum appropriation that may be voted in the annual budget for a particular spending purpose. We believe that although the selectmen and the finance committee may recommend a lower appropriation than would be needed to fund the town's share of the proposed budget, they cannot prevent the town meeting from appropriating the amount sought by the regional school district.

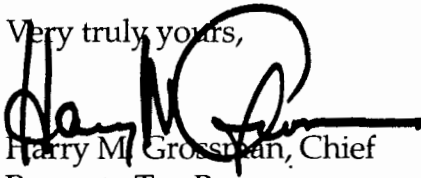
However, nothing requires that a warrant article for an appropriation for a regional school assessment (or any other purpose) specify a dollar amount to be appropriated. The warrant may simply state the spending purpose of the appropriation, with the finance committee report setting out the recommended amounts to be appropriated. Although it would be preferable for either the warrant or the finance committee recommendation to state the amount of the town's assessment under the regional school committee's proposed budget as well as the amount recommended by the finance committee, we know of no legal requirement for such a practice.

The selectmen can place two articles on the warrant dealing with the regional school, one to appropriate a portion of the requested amount, and a separate article under G.L. Ch.59 §21C(m) to appropriate additional money to fund the regional school assessment, contingent upon the passage of a subsequent override. The placing of two separate articles would not prevent the town meeting from appropriating the entire amount requested by the district under the article without the contingency, but

if the town meeting appropriated the requested amount in two parts, one portion without any contingency and the other contingent upon a subsequent election, the town's vote would not constitute an approval of the budget unless the override question were approved within the statutory time limits.

Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,



Harry M. Grossman, Chief
Property Tax Bureau



April 15, 1997

David P. Trainor, Director of Administrative Services
Wachusett Regional School District
Post Office Place, 206 Worcester Road
P.O. Box 1097
Princeton, MA 01541-1097

Re: Town Meeting Warrant for Regional School Budget
Our File No.97-273

Dear Mr. Trainor:

This is in reply to your request for clarification of our earlier letter on the same topic. The clarification dealt specifically with the situation in which a town meeting warrant divides up the requested regional school appropriation into two parts, one subject to a contingency and the other not. You asked whether the town meeting could amend upward the article which called for an appropriation without any contingency, so as to fund fully the regional district's requested budget without the need for the passage of any override question. The alternative would be to amend the article seeking a contingent appropriation to remove the contingency.

We believe that the town meeting is entitled to amend the article for the non-contingent appropriation up to the amount needed to fund the town's assessment under the budget proposed by the regional school district. The concern that the statement in the warrant of an amount to be appropriated might limit the town meeting's power to appropriate a greater amount is derived from a 1920 Opinion of the Attorney General (Vol. V Op. Atty. Gen. 519). In that case, a special article for a capital purpose (reconstruction of a certain street) stated an amount to be spent for the purpose. The town meeting appropriated more than double the amount proposed in the warrant article. The Attorney General ruled the appropriation invalid, reasoning that voters were entitled to assume that no more would be voted under that article than the amount proposed. We do not believe that the rationale of that opinion can legitimately be extended to appropriations that constitute approval of a budget for a regional school district.

Under G.L. Ch.71 §16B regional school district budgets adopted by the regional school committee require the approval of two thirds of the members' appropriating authorities in order to take effect. Since the town meeting is the appropriating body for a town, the right to approve or disapprove the district budget belongs to it. In this statutory context, we do not believe that voters are entitled to assume that no more than the amount stated in the warrant will be appropriated for the regional school assessment, where the budget adopted by the regional committee requires a larger appropriation in order to be approved. Extending the rationale of the Attorney General's opinion to appropriations for regional school assessments would let selectmen preempt a town meeting's decision on the regional school budget by proposing in the warrant a smaller appropriation than would be needed to approve the regional committee's requested budget. As we

indicated in our earlier letter, this would be inconsistent with the statutory scheme for the approval of such budgets.

If the town meeting follows the selectmen's recommendation and makes part of the appropriation for the regional school budget contingent upon the subsequent passage of an override question, then that town has not approved the regional budget if the override does not pass within the time limits set out in G.L. Ch.59 §21C(m). Where two thirds of the members have appropriated their assessments under the proposed district budget, either through the passage of override questions validating contingent appropriations or by non-contingent appropriations, the regional budget is approved and binding upon all the members, including those without sufficient appropriations to pay their assessments under the budget. In a regional district whose budget has not obtained the approval of two thirds of its members, the regional committee can amend its budget so that the appropriations of two thirds of its members will meet their assessments under the amended budget, in which case the amended budget will be deemed approved without the need for additional action by any of the member communities. Where the regional committee does not adopt such an amended budget, there is some obscurity about the status of the district's spending power. The Department of Education takes the view that the regional school budget approval process governs even for a regional district's mandated spending under G.L. Ch.70 §6, which is based on a district's state aid and the members' minimum required local contributions; until a budget is approved, spending would be controlled by the one-twelfth budget provision of §16B.

Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,

Harry M. Grossman, Chief
Property Tax Bureau



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

200 Portland Street
Boston 02114-1715

STEPHEN W. KIDDER
Commissioner

(617) 727-2300

EDWARD J. COLLINS, JR.
Deputy Commissioner

November 26, 1990

Charlotte M. Noponen
Collector/Treasurer
Town Hall
Winchendon, MA 01475

Re: School Budget Issues
Our File No. 90-947

Dear Ms. Noponen:

You have asked whether the town may include in the school committee budget certain school related costs common to all or many town departments, which have previously been paid out of other department budgets. Specifically, you ask whether the school's share of workers' compensation, employee liability, vehicle, building and group life and health insurance premiums, as well as the school's share of the retirement assessment and unemployment costs may be included in their budget. If so, you also wish to know whether such amounts could be transferred from such uses for another purpose by vote of the school committee and whether the town could be liable to pay them if the school committee ran out of funds. Although this mechanism of budgeting for such costs is permissible, we do not usually recommend it for several reasons.

First, I point out that the mechanism of appropriating the school budget requires that the school committee prepare and submit an itemized budget. G.L. Ch. 41, S. 59. The finance committee is required to submit its own recommendations under G.L. Ch. 41, S. 60, but the town must be presented with the itemized school committee recommendations at town meeting as well. G.L. Ch. 71, S. 34. Town meeting can then make recommendations for additions, deletions, increases and reductions in line items, but the final vote may only provide the bottom line appropriation. G.L. Ch. 71, S. 34. We have also concluded that town meeting cannot get around the school committee line item autonomy by making special purpose appropriations of school department operating expenses.

Nevertheless, a town may give the school committee the responsibility of performing certain school related functions which are not directly related to the operation of the schools. The Supreme Judicial Court has ruled that since school transportation bears only a secondary relation to education and that the duty to provide transportation was placed on the town under Chapter 40, such expenses did not have to be placed in the school committee budget, but if so placed, there was no authority of the school committee to transfer amounts from school transportation accounts to other school purposes. *Ring v. Woburn*, 311 Mass. 679 (1942); *Graves v. Fairhaven*, 338 Mass. 290 (1959). Thus, the school committee may be given the responsibility of providing transportation for students by appropriating such expenses in a line item in the school committee budget or by a special article.

Similarly, prior to the elimination of G.L. Ch. 40, S. 5(34) by St. 1989, Ch. 687, S. 12, the legislature specifically required a line item for out-of-state travel expenses from which the school committee could not unilaterally transfer funds. We have also stated that capital expenses may be placed under school committee authority and amounts so appropriated may not be transferred for another use.

Turning now to the expenses you have listed, none of them are clearly under the authority of the school committee to allocate direct operating costs for education of students. These expenses have traditionally been included in the appropriation for a single town department, such as the board of selectmen or treasurer, for administrative ease, since the expenses are shared in differing proportions by all or many town departments. However, some of the expenses are certainly related to school department operating expenses. For example, group life and health insurance benefits are often considered a part of terms and conditions of employment of school department employees and may even be subject to some control by the school committee. See *Anderson v. Board of Selectmen of Wrentham*, 406 Mass. 508, 511-12, n. 7 (1990). Contributions to non-teacher retirement funds are another aspect of benefits for employees which is part of the yearly operating expense of every town department, including the school committee.

We see no legal impediment to allocating these costs to the school department budget. Similarly, such costs could legally be allocated to other town departments on a pro-rata basis. However, accounting for such expenditures then becomes more complicated, requires more paperwork and ultimately could create administrative difficulties. For example, if unemployment or workers' compensation costs were allocated to the school committee and to other town departments, but some departments had greater expenses and others less than budgeted, a town meeting vote would be required to transfer funds from one department to another.

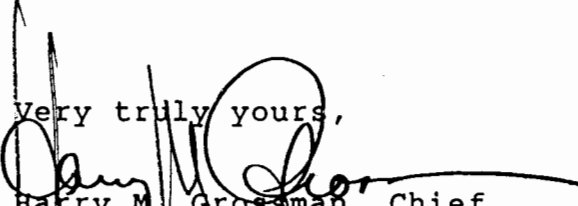
Charlotte M. Noponen
Page Three

Arguably, since these separate line item appropriations could properly be in another department budget, they may not be transferred by the school committee for another use. However, since they are clearly town obligations, if the school committee did run short of funds or refused to expend the funds for such purposes or did somehow manage to transfer them for another purpose, the town might be liable to pay such expenses in a legal action. Although the school committee might be equally liable, there may be no funds in the school committee available to cover any judgment or settlement of any legal claim.

We recommend that these expenses continue to be included in other town budgets for administrative ease and better town control. We understand that the town manager might like to allocate them to the school committee to show the actual cost of the school department and/or to make the school committee shoulder its share of the burden. These purposes may also be accomplished by showing these costs allocated to the school department in the finance committee report and by reducing the school committee budget by the amounts of these expenses attributable to the school department.

If I may be of further service, please do not hesitate to contact me again.

Very truly yours,


Harry M. Grossman, Chief
Property Tax Bureau



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

P.O. Box 9655
Boston 02114-9655

MITCHELL ADAMS
Commissioner

(617) 727-2300
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LESLIE A. KIRWAN
Deputy Commissioner

February 7, 1994

Francis J. Cinelli
Superintendent of Schools
Plainville, MA 02762

Re: Signatures on School Dept. Bill Schedules
Our File No. 93-983

Dear Superintendent Cinelli:

Given the changes in the law provided in the Education Reform Act of 1993 (St. 1993, Ch. 71), you wish to know:

1. Does the school superintendent have the authority or the responsibility to sign bill schedules?
2. Should the superintendent, together with the chairman or a delegated member of the school committee, sign bill schedules?
3. Is a majority of signatures of the school committee required on bill schedules?

1.-3. In our opinion, bills of the school department must be approved (and therefor signed) by a majority of the school committee when the school committee has sole authority to incur the expense. When the superintendent or principal and superintendent have statutory authority to incur expense, bills must be approved by a majority of the school committee and by the superintendent or principal and superintendent.

In the case of payrolls the school committee as "head of the department" may designate one of its members to swear thereto. In addition, the superintendent should also swear to payrolls of employees appointed or employed solely by him and should co-swear, along with the principal, to payrolls of employees in a particular school.

Under the municipal finance law:

all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant ... all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. G.L. Ch. 41, S. 56. (emphasis added)

In addition, the treasurer may not pay any salary or compensation to any person in the service or employment of the town:

unless the payroll, bill or account for such salary or compensation shall be sworn to by the head of the department or the person immediately responsible for the appointment, employment, promotion, or transfer of the persons named therein ... A commission, committee or board of trustees in a city or town ... may for purposes of this section designate any one of its members to make oath to a payroll, bill or account for salary or compensation of its members or employees. G.L. Ch. 41, S. 41. (emphasis added)

Prior to Ed Reform the school committee was the head of the school department, the employing authority and the committee authorized to expend school department funds under these statutes. See former G.L. Ch. 71, SS. 37 & 38. With respect to payrolls, the school committee could designate one of its members to sign. However, with respect to other bills, a majority of the school committee was required to sign, since the authority was granted to the school committee which had to act jointly by a majority of its members, under G.L. Ch. 4, S. 6, Cl. Fifth.

Under specific provisions of Ed Reform, the superintendent and principals in individual schools appear to be given the authority to expend money for certain goods and services. However, such authority is expressly limited by policies and budgetary restrictions from the school committee. St. 1993, Ch. 71, S. 51 amends G.L. Ch. 71, S. 48 and provides that:

The principal at each school, subject to the direction of the superintendent, shall, at the expense of the school district, purchase textbooks and other school supplies, and consistent with the district policy, shall loan them to the pupils attending such school free of charge. If instruction is given in the manual and domestic arts, the principal may so purchase and loan the necessary tools, implements and materials. The principal shall also, at like expense, procure such apparatus, reference books and

other means of illustration, as may be needed. Said purchases shall be made in accordance with chapter thirty B and with the purchasing guidelines adopted by the municipality where such purchases are made if such guidelines exist.

There is no similar provision for purchase of other materials, but superintendents are given general authority to:

manage the system in a fashion consistent with state law and the policy determinations of the school committee. St. 1993, Ch. 71, S. 52 amending G.L. Ch. 71, S. 59. (emphasis added)

Also:

[p]rincipals ... shall be the educational administrators and managers of their schools and shall supervise the operation and management of their schools and school property, subject to the supervision and direction of the superintendent. Principals ... shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, instructional or administrative aides, and other personnel assigned to the school, and for terminating all such personnel, subject to review and prior approval of the superintendent and subject to the provisions of this chapter. ...

The school superintendent ... may also appoint administrators and other personnel not assigned to particular schools, at levels of compensation determined in accordance with policies established by the school committee. (emphasis added)

Ed Reform also eliminated language in G.L. Ch. 71, SS. 37 & 38 granting the school committee general charge over the department and the authority to contract with teachers and aides. Nevertheless, even after Ed Reform the school committee retains certain expansive powers which make it clear that it is still the ultimate authority with respect to educational expenditures. Significantly, as modified, G.L. Ch. 71, S. 37 now provides:

The school committee ... shall review and approve budgets for public education in the district, and shall establish educational goals and policies for the schools in the district consistent with the requirements of law and statewide goals and standards

established by the board of education. (emphasis added)

G.L. Ch. 71, S. 34 remains unchanged and provides in part:

... The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating [public school] appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation. (emphasis added).

The school committee, with the addition of the chief executive officer of the municipality, retains the authority to negotiate and execute collective bargaining agreements which establish wages, benefits and other terms and conditions of employment for school employees. G.L. Ch. 150E, S. 1, Definition of "Employer" or "public employer", as amended by St. 1993, Ch. 71, S. 62. Cost items of such agreements are binding on the school department without submission to the appropriating authority, under G.L. Ch. 150E, S. 7(b), provided that there are sufficient unencumbered funds in the budget in the year of execution to cover any additional costs.

Thus, we conclude that although the superintendent and principal now have statutory authority to make certain contracts for materials and service, they may do so only to the extent the school committee has allocated funds from its budget for the purpose and subject to school committee policy. We therefore conclude that the school committee must approve, by signature of a majority of its members, under G.L. Ch. 41, S. 56 and G.L. Ch. 4, S. 6, Cl. Fifth, all bill schedules for purchases of goods or services by the school department. In cases where the superintendent or superintendent and principal have the statutory authority to incur the expense, those officers must also sign those bills to authorize payment.

Payrolls may be sworn to by the head of the department or person immediately responsible for appointing, employing, promoting or transferring the employees. G.L. Ch. 41, S. 41. Despite the significant changes granting superintendents and principals more management authority for day to day operation of schools, the ultimate authority for approving and allocating budget items and setting educational policy remain with the school committee, which retains specific contractual authority for

Francis J. Cinelli
Page Five

superintendents and other specific employees and services, as well as for collective bargaining.

Weighing the roles of the various officers, we are of the opinion that the school committee remains the head of the department for purposes of this statute. Compare Montanari v. Director of Civil Service, 356 Mass. 514 (1969); Bryson v. Mayor of Waltham, 329 Mass. 524 (1952); Daley v. District Court of Western Hampden, 304 Mass. 86 (1939); With Davis v. School Committee of Somerville, 307 Mass. 355 (1940); Fluet v. McCabe, 299 Mass. 173 (1938). See also Golubek v. Westfield Gas & Electric Light Board, 32 Mass App. Ct. 954 (1992). As such, it may swear to the payroll by designating one of its members to make oath to it. The ultimate responsibility for the payroll remains with the full committee, however.

G.L. Ch. 41, S. 41 appears to separately authorize the person immediately responsible for employing personnel to swear to the payroll. We think that this provision controls primarily where there is no department but there is separate authority of a town officer or board to employ personnel at town expense, such as for a special purpose. However, given that the superintendent and principal have specific statutory authority to employ certain school personnel, and they are more familiar with the day to day operation of the school, they should also swear to the payrolls of such employees.

We hope this addresses your concerns. If we may be of further service, please do not hesitate to contact us again.

Very truly yours,



Harry M. Grossman
Chief, Property Tax Bureau



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

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MITCHELL ADAMS
Commissioner

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LESLIE A. KIRWAN
Deputy Commissioner

June 22, 1994

John C. Gates
Callahan, Curtiss, Carey & Gates
173 Main Street, P.O. Box 509
Greenfield, MA 01302

Re: Frontier Regional/Union 38 Authority to Approve Bill Warrants
Our File No. 94-545

Dear Mr. Gates:

You have asked for our opinion as to whether a policy adopted by Frontier Regional School District Committee and School Union #38 concerning the authority to sign bill warrants is permitted by municipal finance law, given the amendments to Chapter 71 of the General Laws made by St. 1993, Ch. 71. The policy states:

To authorize bills for payment, a warrant must be prepared for each budget account totaling the current bills to be paid from that account. This warrant shall be signed by the Principal, Business Manager and Superintendent but in every instance at least the Principal, Staff and/or Business Manager and is subject to review by the School Committee. For the Union #38 School District only, warrants shall be sent to the Town Accountant for review prior to their approval and processing for payment by the Selectman (sic).

You suggest that the policy is a delegation to the superintendent, principal and business manager of the ministerial task of signing warrants within school committee adopted budget line items.

As you are aware, we recently indicated our opinion concerning the requirements of the municipal finance laws with respect to signing school department bills and payrolls in a town system. We believe, despite apparent expansion of powers of school superintendents and principals provided in the Education Reform Act, the requirement of signing payrolls and bills remained primarily with the school committee under G.L. Ch. 41, SS. 41 & 56.

John C. Gates
Page Two

With respect to regional school districts, the requirement for school committee approval of bills and payrolls is even more specific and was unchanged by the Education Reform Act amendments. Under G.L. Ch. 71, S. 16A:

The powers, duties and liabilities of a regional school district shall be vested in and exercised by a regional school district committee ... The treasurer [of the regional school district] shall receive and take charge of all money belonging to the district and shall pay any bill of the district which shall have been approved by the [school] committee. ... Emphasis supplied.

However, the regional school committee has specific authority to delegate this responsibility to a subcommittee of its members, with certain reporting requirements, under that same section:

The committee may establish a subcommittee of no less than three members for the purpose of signing payroll warrants and accounts payable warrants to allow for the release of checks; provided, however, that such subcommittee shall make available to the committee at the next meeting, a record of such actions. G.L. Ch. 71, S. 16A (emphasis added).

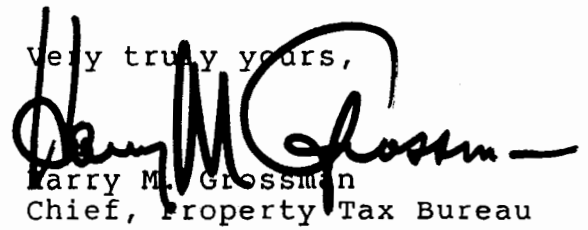
With respect to bills and payrolls of each individual town in Union #38, the school committee in each town must approve them under G.L. Ch. 41, SS. 41 & 56, as we indicated in our opinion to the town of Plainville (Our File No. 93-983). When the superintendent or principal and superintendent have statutory authority to incur expense, bills must be approved by a majority of the school committee and by the superintendent or principal and superintendent, as the case may be. In the case of payrolls, each town school committee may designate one of its members to swear to them; and, the superintendent or principal and superintendent should also swear to them.

In our opinion, the responsibility of the school committee in towns and regional school districts to sign (approve) bills and payrolls is one of its substantive duties and not merely ministerial. As an elected public body the school committee is specifically responsible for the school budget. G.L. Ch. 71, SS. 16 & 34. The statutory scheme makes it clear that the school committee is also responsible for making sure it lives within its budget by carefully monitoring the expenditures made from it. It cannot delegate its responsibility to do so except to the extent specifically authorized by statute.

John C. Gates
Page Three

If we may be of further service, please do not hesitate to
contact us again.

Very truly yours,



Harry M. Grossman
Chief, Property Tax Bureau



May 10, 2004

Pamela Dukeman
Finance Director
Town Hall
580 High St.
Westwood, MA 02090

Re: School Encumbrances
Our File No. 2003-413

Dear Ms. Dukeman:

This is in reply to your letter concerning the validity of certain school department encumbrances.

The resolution of several of the issues raised in your letter appears to turn at least in part on the specific facts of the situation, which we are not well placed to evaluate. For example, the determination of what constitutes adequate documentation for an encumbrance may depend upon local practice, bylaws and the allocation of responsibilities among various town officials. We will therefore limit our comments to certain general principles that we hope will help in the resolution of the particular encumbrances.

Encumbrances are an accounting device to ensure that municipalities do not close out operating appropriation balances against which vendors and employees may have enforceable contractual claims at the end of the fiscal year. Appropriations, whether for operating purposes or special purposes, constitute a delegation to the department of the municipality's power to make contracts. Without an appropriation or other funding source such as a grant, municipal officials generally do not have the power to incur obligations that will bind the city or town. G.L. Ch.44 §31.

Special purpose appropriations are not related to a particular fiscal year, and therefore remain open until the purpose is fulfilled or abandoned. There is no need for encumbrances against such an appropriation because the appropriation has no pre-determined expiration date. Operating appropriations in the annual budget are limited to spending for the operation of the city or town department in that fiscal year, and must be closed out at the end of the fiscal year. G.L. Ch.44 §§56 & 56A. If the municipal accounting officer closed out the undisbursed balance of an operating appropriation against which the department had already incurred an obligation, the city or town would still be liable for that obligation. The closed-out appropriation balance would in the ordinary course of things be certified as part of its free cash; if that free cash were

spent, the result would be a deficit. To avoid such deficits, operating budget appropriations need be encumbered to the extent that the department has already entered into binding contractual arrangements in reliance upon the appropriation. Encumbrances should not be made merely on the basis of a department's planned or intended expenditures, where no other party could have acquired legally binding rights to payment based upon the municipality's actions. Thus, the amount of an outstanding purchase order that has been placed with a vendor by June 30 should be encumbered; the amount of a proposed purchase that has gone out to bid by June 30 but for which no contract has been awarded should not be encumbered.

G.L. Ch.71 §34 does not by its terms have any direct bearing on the issues raised by encumbrances. §34 constrains the power of a *municipal appropriating body* to prescribe the details of school spending through the annual budget process. Cities and towns can generally appropriate departmental budgets other than the schools' budget in as much detail as they wish, and such details will be binding on the departments, but any details within the school department's operating budget are no more than a recommendation to the school committee. The limitation on spending from one fiscal year's appropriation for purposes of another fiscal year derives not from the details of any municipality's budget, but from the scheme of municipal finance established by the General Laws, in particular, the provisions for *annual* operating budgets.

One provision of Education Reform is relevant to encumbrances. G.L. Ch.70 §11 provides that to the extent a school district underspends its net school spending obligation, the balance of the appropriation (up to 5% of the required net school spending) is automatically carried forward to the following year. No purchase orders are necessary for such carry-forward amounts. But for unspent school budget balances in municipalities that have met their net school spending obligation, this automatic carry-forward rule is inapplicable. The normal rules governing encumbrances based on purchase orders apply.

Other provisions of Education Reform have an indirect bearing on the issue of encumbrances. The entire elaborate apparatus of financial formulas in G.L. Ch.70, which sets out the calculation of schools' spending requirements and municipalities' school funding obligations, rests on the premise that each fiscal year's school budget is for spending *of that school year*, with the one exception referred to above that derives from §11. This presupposition in Ch.70 highlights the significance of the language of G.L. Ch.71 §34, which says that municipalities "...shall *annually* provide an amount of money sufficient for the support of the public schools... (emphasis added)." Ch.71 §40 and Ch.44 §§56 & 56A provide that teachers' salaries paid over the summer must be charged to the budget of the year in which they were earned. Special acts were required to create an exception to that rule for fiscal years 1991 and 1992 (Chs.223 & 336 of the Acts of 1990). Another statutory exception, Ch.71 §49A, was needed to allow school departments to make contracts payable from the following year's budget for the delivery of goods and supplies in the following fiscal year. Taken together, these general provisions and statutory exceptions make it clear that each fiscal year's school

budget is a distinct spending authorization, within which the school's line-item fiscal autonomy under §34 is operative.

The idea that annual departmental appropriations are for operating expenditures of the fiscal year is reflected in numerous other statutes relating to municipal finance as well. As noted above, Ch.44 §§56 and 56A, in addition to dealing with teachers' summer pay, provide for the closing of accounts each fiscal year as of June 30th. The municipal budgeting provisions of Ch.41 §§59-60 and Ch.44 §§31, 31A, 32-33B and the annual tax rate setting provisions of Ch.59 §23 likewise rest on the assumption that annual appropriations are for the operations of the fiscal year to which they relate. Courts, in construing the budgeting statutes, have proceeded on the same assumption. In *McHenry v. City of Lawrence*, (1936) 295 Mass. 119, the Supreme Judicial Court had to decide whether hiring extra employees during a fiscal year incurred a liability in excess of the departmental appropriation under G.L. Ch.44 §31. In analyzing the question, the court treated the sum of the entire annual salaries of regular employees already on the payroll as though it were an encumbrance against the departmental salary appropriation. It concluded that hiring the additional employees violated §31, because the appropriation was not enough to pay the additional employees as well as the full annual salaries of existing employees.

We do not believe that the cost of a school department contract for services, which by the contract's very terms are to be performed entirely in a succeeding fiscal year, can be charged against the current fiscal year's appropriation. However, if some part of the services are to be performed in the current year, then we think that the entire cost of the contract, including the part related to the portion of the contract to be performed in the following year, may be encumbered against the current year's appropriation.

Periodic charges such as utility bills, whose billing periods overlap the end of the municipal fiscal year, raise awkward problems. Such liabilities arise for a particular billing period not by virtue of any separate purchase order or contract entered into by the department, but merely because of the volume of service used in that period. Theoretically, the departmental appropriation could be encumbered based upon the cost of services provided through June 30th, and the bill paid partly from the encumbrance and partly from the succeeding year's appropriation, in the same way salaries for a pay period that includes parts of two fiscal years are paid. But such an approach is administratively impractical for charges such as utility bills, which unlike salaries cannot simply be pro-rated between different fiscal years based upon the number of days of the billing period in each year. It is reasonable in our view to pay such bills for periods that overlap the end of the fiscal year either by encumbering the prior year's appropriation and paying the bill from the encumbrance, with any surplus in the encumbered amount reverting to the general fund, or by charging the bill to the following year's appropriation. But we believe that whichever practice is adopted should be followed consistently, so that no more than a year's worth of bills are paid from any given fiscal year's appropriation. In the case of monthly bills, that would

mean no more than twelve bills paid from any given annual budget. A rule allowing a department discretion to pay thirteen months of bills from one fiscal year's operating budget would in effect allow that department to transfer appropriations between fiscal years. The power to transfer appropriations between different spending purposes is reserved to the municipal appropriating authority under G.L. Ch.44 §33B.

Although it is clear that school committees cannot simply spend for capital purposes without specific authorization (see *Arthur R. Murphy, A.I.A., & Associates Inc. v. Brockton*, 364 Mass 377 and *Plymouth-Carver Regional School District v. David M. Crawley Associates Inc.*, 17 Mass.App.Ct. 901), the proper characterization of expenditures as operating or capital is sometimes difficult. Whether an expense is one for which the town could borrow is a useful threshold test, but not sufficient in itself to resolve the issue. For schools, the purchase of instructional equipment from the operating budget is within the school committee's line-item autonomy even if a comparable equipment purchase by another department would be a capital expense. See *Ring v. Woburn*, 311 Mass 679 (1942).

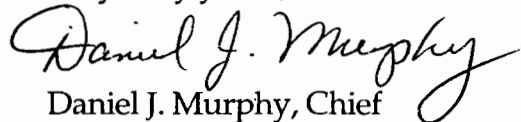
Whether the purchase of non-instructional equipment by a local school department is properly characterized as a capital purpose is an issue on which the statutes and the case law give little specific guidance; it is largely a matter of the town's established practice. If the town had a bylaw requiring all departmental purchases of items costing more than, say, \$10,000 to be separately appropriated in a capital budget, we think that such a bylaw would bind the school department, so that it could not charge such items to its operating budget. Even in the absence of a bylaw, a consistent practice by the town of separately appropriating for the purchase of such items by all town departments, and refusing to pay for such items from departmental operating budgets, should be binding on the local school system too. With respect to your question regarding the purchase of a copier for \$31,500, we note that the school superintendent acknowledged in a letter to the department of education that the town had made separate capital appropriations for the school system to purchase photocopiers. In that context, we do not see how a similar additional purchase can qualify as an operating expense. The superintendent's assertion in his letter to the department of education that the copiers will be used for educational purposes is beside the point; all school expenditures, whether capital or operating, are for educational purposes. The cost of building a new school is an expenditure for educational purposes, but a school department could not divert part of its operating budget to supplement the capital appropriation for such construction.

The issue whether a school department may charge purchases of large amounts of supplies at the end of the fiscal year to the budget of the fiscal year that is ending was decided by *School Committee of Wilmington v. Town Accountant of Wilmington*, (1985) 19 Mass.App.Ct. 964. The Appeals Court's decision in *Wilmington* dealt with quite a narrow question: did the town accountant have the authority to prohibit additional departmental purchase orders for goods and supplies after June 10th of the fiscal year, thereby limiting the school department's budgetary discretion during the fiscal year?

The appeals court ruled that the accountant's policy improperly limited the school department's fiscal autonomy. The school committee conceded that the goods to be ordered after June 10th would be *used in* the following year. Because the facts of the case did not raise the issues, the court did not consider the validity of contracts for services to be performed entirely in the following fiscal year, nor contracts for supplies that called for *delivery in* the following fiscal year. That may be one reason the court did not discuss the relevance of G.L. Ch.71 §49A. Such a discussion was to be expected if the court had intended its decision as a broad holding that annual school appropriations are not in any way limited to the operating purposes of their respective fiscal years. We are skeptical that a town accountant has inherent authority to impose a cut-off date other than June 30th for purchase orders by any departments.

We hope that these general considerations help resolve Westwood's encumbrances issues.

Very truly yours,

A handwritten signature in black ink that reads "Daniel J. Murphy". The signature is fluid and cursive, with the first name "Daniel" and last name "Murphy" clearly legible.

Daniel J. Murphy, Chief
Property Tax Bureau

DJM/CH



August 20, 2004

Frederick F. Foresteire
Superintendent of Schools
121 Vine St.
Everett, MA 02149

Re: Funding Source for Prior Year's Unpaid Bills (GL Ch.44 §64)
Our File No. 2004-329

Dear Mr. Foresteire:

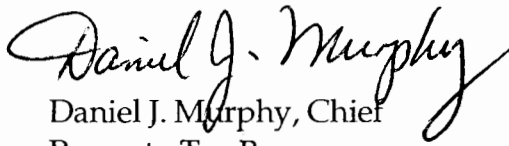
This is in reply to your letter asking whether under GL Ch.44 §64 the city council could approve payment of unpaid FY2004 bills from the school department's FY2005 budget.

We believe the city can use the school department's FY2005 budget as a funding source to pay the bills, but we do not think the city council can authorize the school department to pay such bills directly from the FY2005 school budget. Ch.44 §64 permits municipalities to appropriate money to pay bills that are otherwise unenforceable because they were incurred in excess of a departmental appropriation, and therefore in violation of GL Ch.44 §31. Nothing in §64 itself restricts the funding source for such an appropriation to pay prior years' bills. We doubt that Ch.44 §33B (requiring departmental approval in cities for transfers to another department's budget) is applicable, but even if it were, we assume from your letter that the school department would consent to any such appropriation from its FY 2005 budget. Other statutes that restrict funding sources in various ways (such as Ch.44 §2 and §20, prohibiting the use of bond proceeds to pay operating expenses) do not seem relevant to the proposed appropriation.

We therefore believe that the city council, upon recommendation by the mayor (see GL Ch.44 §32), could appropriate for such unpaid bills by transferring money from the fiscal 2005 school department budget.

Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,


Daniel J. Murphy, Chief
Property Tax Bureau

DJM/CH



October 14, 2004

Jeff Wulfson
Associate Commissioner for School Finance
Department of Education
17 Pleasant Street
Malden MA 02148-5106

Re: Prepaid Special Education Tuition
Our File No. 2004-319

Dear Mr. Wulfson:

You asked whether a school committee may prepay tuition expenses for services to be provided to special needs students in one fiscal year from its prior year's budget. We think it may do so.

As a general rule, the costs of any school department's contract for services to be performed entirely in the subsequent fiscal year cannot be charged against a current year's appropriation. Your question relates specifically to G.L. c. 71 §71D, however, which states:

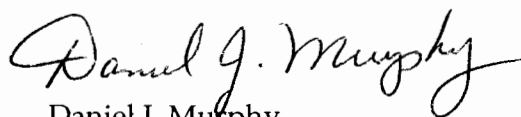
A school committee of any city, town, or regional school district may authorize the prepayment of tuition for a period not exceeding three months to any approved private school or approved program source which a student is attending under the provisions of chapter seventy-one B, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee. (Emphasis added).

This statute creates a limited exception to the basic rule that municipalities may not make advance payments for either goods or services. G.L. c. 41 §56. It does not specifically address prepaying special needs students' tuitions in the fiscal year preceding the year in which the services are to be rendered, however. Nevertheless, the statute broadly authorizes prepayments without specifically limiting when such payments may be made and therefore, we believe a court could reasonably conclude that a school committee may properly pay special needs students' tuition costs for the subsequent fiscal year from the current year's budget. See *School Committee of Wilmington v. Town Accountant of Wilmington*, 19 Mass. App. Ct. 964 (1985).

At the same time, tuitions for special needs students are recurring costs that must be paid year after year. As with other recurring costs, such as those for utilities and insurance, we think school committees should fund only one year's worth of tuition expenses from any fiscal year's budget.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,


Daniel J. Murphy
Chief, Property Tax Bureau

DJM:KC



March 31, 2006

Edmund Traverso
38 East St.
Ipswich, MA 01938

Re: Revenues from the Use of School Property
Our File No. 2006-59

Dear Mr. Traverso:

This is in reply to your letter asking several questions about the use of revenue from school property.

The general rule for municipal receipts is that all such money is general fund revenue that the town may spend for any lawful purpose, and only by appropriation. GL Ch. 44 §53, available at <http://www.mass.gov/legis/laws/mgl/44-53.htm>. There are, however, a number of statutory exceptions for various types of school revenues. GL Ch.40 §3 and GL Ch. 71 §71E both deal in particular with revenue from the lease or rental of school buildings. It is not clear that either of these revolving funds would be available for revenue from the types of rental you mention in your letter.

A school committee can spend money without appropriation from revolving funds established under either statute. The revolving fund under G.L. Ch.40 §3, which may be spent only for maintenance, is funded by revenues from the leasing of school buildings not in actual use, or surplus space in school buildings that are still used in part for regular school purposes. Unless the municipality has accepted the last sentence of §3, the balance in the revolving fund at the end of each fiscal year closes out to the municipality's general fund, and the money fund may be spent only for the maintenance of the property that generates the revenue. There are no particular limitations on the nature of the lessees or the activities that they may conduct on the leased premises, except that if the lease is for property part of which is still being used as a school, the lessee's occupancy cannot interfere with the school use. Revenue from market rate leases for purely commercial, for-profit purposes is within the scope of the revolving fund under Ch.40 §3. However, leases or rental agreements under Ch.40 §3 must be authorized by the town and approved by the school committee.

G.L. Ch.71 §71E, which must be accepted by a town meeting vote to be in effect, provides for two revolving funds. One is for the revenues of adult and continuing education programs sponsored by the school committee. Such revenue may be spent for

the expenses of the program, such as instructors' stipends. The other revolving fund under Ch.71 §71E is for the temporary use of school property under G.L. Ch.71 §71. It may be spent for "...expenses incurred in making school property available for such use...." Typical expenses from that fund would include such costs as janitors' overtime. Section 71 is narrower in the scope of uses contemplated than G.L. Ch.40 §3. It authorizes uses of school property outside regular school hours, either for educational and recreational activities sponsored by the school committee, or by third parties for "...educational, recreational, social, civic, philanthropic and like purposes...." We do not think that Ch.71 §71E applies to a purely commercial rental of school property to for-profit entities.

You also mentioned the so-called athletic revolving fund, authorized under GL Ch.71 §47. This fund cannot be used for revenue from rentals unconnected with school activities. It is restricted to the deposit of revenues from specifically identified activities, mostly connected with athletics, and from activities "sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant," which does not seem applicable to the revenues you described in your letter.

We hope this information proves helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC/CH



November 22, 2005

Richard Howarth
Town Accountant
Town Hall
150 Concord St.
Framingham, MA 01702

Re: Use Of School Property Revolving Fund – GL Ch.71 §71E
Our File No. 2005-445

Dear Mr. Howarth:

This is in reply to your questions about the use of school property revolving fund authorized under GL Ch.71 §71E.

Your first question concerned the propriety of a \$50,000 charge to the revolving fund for a payment under a lease-purchase contract for the acquisition of a school modular building. GL Ch.71 §71 gives school committees the right "consistently and without interference with the use of the premises for school purposes " to allow the use of school property for "such educational, recreational, social, civic, philanthropic and like purposes as [the school committee] deems for the interest of the community." Eligible uses would typically be on weekends and after regular school hours.

If the municipality has accepted §71E, money such as rental payments received in connection with the use of school property under GL Ch.71 §71 is deposited in the revolving fund, and may be used to pay "expenses incurred in making school property available for such use." It is difficult to see how the costs of payments under the lease-purchase agreement can be said to have been incurred in making school property available for the uses authorized under §71. Even if the revenue in the account were generated solely by the leased modular building (which we understand is not the case), we do not see how the lease payments could be charged to the revolving fund, since those payments would be due whether or not there were the community uses under §71. We believe that the costs for which the revolving fund may be expended are the incremental costs for such things as janitors' overtime or additional utility costs for heating and lighting the building, that is, costs that would not have arisen if the premises had been used only for school purposes.

We find ourselves unable to offer much specific advice in response to your second question, asking whether we could recommend a method of allocating allowable expenses between the regular budget and the revolving fund. We know of no legal basis other than "reasonableness" for making such allocations. For costs such as janitors' overtime, it may

not be necessary to use an allocation method; it may be feasible simply to keep track of the overtime hours janitors work on account of such after-school uses of school buildings. But where no direct measure of costs is possible, some allocation formula is necessary. What is a reasonable method of allocating costs between the revolving fund and the regular school appropriation depends on both the nature of the costs and the type and quality of the information available. There some examples of cost allocations that may be helpful in the Technical Assistance Bureau's workbook and case study *Costing Municipal Services*, which is available on the web at <http://www.dls.state.ma.us/publ/misc/costing.pdf>.

We hope this information is helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathleen Colleary', written in a cursive style.

Kathleen Colleary, Chief
Property Tax Bureau

KC/CH

Proposed Amendments to 603 CMR 41.00: Regional School Districts

For consideration and initial action by the Board of Education: June 27, 2006

Period of public comment: through October 27, 2006

Final action by the Board of Education anticipated: December 19, 2006

The proposed amendments revise section 41.01 (definitions) and add sections 41.05 (Regional School District Budgets) and 41.06 (Excess and Deficiency Funds) to the regulations for Regional School Districts. The purpose of these amendments is to clarify the procedural requirements governing regional school district budgets.

In accordance with the Administrative Procedure Act, G.L. c. 30A, § 3, the Board of Education invites written comments on the proposed amendments to the regulations. Following the period of public comment, the Board is expected to adopt the regulations in final form at its meeting on December 19, 2006.

The proposed amendments to the regulations are indicated below by underscore (new language). Sections of the regulations that are unchanged are not reproduced in this document. The full text of 603 CMR 41.00 is available on the Department of Education website at <http://www.doc.mass.edu/lawsregs/603cmr41.html>.

41.01: Definitions

As used in 603 CMR 41.00 the following terms shall have the following meanings:

Department. The Massachusetts Department of Education.

Board. The Board of Education of the Commonwealth of Massachusetts.

Commissioner. The Commissioner of Education or his or her designee.

Expanded Regional School District. An existing regional school district that has added additional grade levels.

Enlarged Regional School District. An existing regional school district that has changed its membership by adding one or more additional municipalities.

Member. A municipality that is a member of a regional school district.

Municipality. Any city or town of the Commonwealth.

Regional School Committee. The regional school committee having charge of a regional school district.

Regional School District. Any local education agency established under M.G.L. c. 71, §15; M.G.L. c. 74, § 5A; or by a special act of the Great and General Court for the purpose of operating regional schools.

School District Reorganization. The formation of a new regional school district or changes in the grade structure or membership of an existing regional school district.

41.02: Reorganization Procedures [unchanged]

41.03: Department of Education Approval

(1) After the Reorganization Needs Conference the Department will either give written notification to proceed or make a written request for additional information or modifications. In the case of an approved proposal to establish a new region, the Department shall direct the Regional School District Planning Board to draft a District Agreement, in accordance with M.G.L. c. 71, § 14B. In the case of an approved proposal to expand or enlarge a regional school district, the Department will direct the regional school committee to draft an amendment to the existing District Agreement.

(2) Admission and Withdrawal of Members

(a) A new member may be admitted to, or an existing member withdraw from, a regional school district as of July 1 of any fiscal year, provided that all requisite approvals for such admission or withdrawal, including the Commissioner's approval, shall be obtained no later than the preceding December 31. The authorizing votes may provide for the deferral of said admission or withdrawal until July 1 of a subsequent fiscal year.

(b) Following the approval of a prospective member for admission into a regional school district and continuing until the actual date of such admission, the local school committee of the prospective member may designate a non-voting representative to the regional school committee.

(23) When a proposed Regional School District Agreement or Amended Agreement has been accepted by all of the participating ~~towns~~ municipalities, the Regional School District Planning Board or Regional School Committee shall submit to the proposed Agreement or Amended Agreement, together with the certified votes of the participating municipalities, to the Commissioner for approval.

(34) The Commissioner shall approve or disapprove a Regional District Agreement, and any subsequent amendments to the Agreement, based on review and recommendation by the Department that the Agreement meets the standards in 603 CMR 41.00 and applicable law. The decision of the Commissioner shall be final.

41.04: Municipal Representatives in Regional School District Collective Bargaining
[unchanged]

41.05: Regional School District Budgets

(1) Initial Adoption by the School Committee

(a) The regional school committee shall propose, by a majority vote, a budget containing all proposed operating expenditures, capital expenditures, and debt service payments to be paid from general revenues of the regional school district. The budget shall be classified into such line items as the regional school committee shall determine, provided that such line items shall be consistent with but need not be to the same level of detail as the chart of accounts required for the end of year reporting of expenditures pursuant to 603 CMR 10.03(3).

(b) The budget shall identify each separate revenue source, and the amount estimated for each revenue source, and shall specify the total amount to be assessed to the members for the support of the budget.

(c) The regional school committee may include a line item in the budget for a reserve for extraordinary and unanticipated expenditures.

(d) The use of fund balances in the regional school district's excess and deficiency account as a revenue source for the budget shall be governed by the provisions of 603 CMR 41.06

(e) The regional school committee may include a line item in the budget for transfers into a stabilization fund established pursuant to M.G.L. c.71, § 16G½. Proposed expenditures from this stabilization fund shall not be included in the budget, but the members shall approve these expenditures in a separate vote, pursuant to the requirements of said section 16G½.

(f) Expenditures from grant funds, revolving funds, trust funds, and other funds that by law may be expended by the regional school committee without further appropriation, shall not be included in the budget. A statement of projected revenues, expenditures, and fund balances for each such fund shall be provided to the members for informational purposes only along with the budget.

(g) The regional school committee shall hold a public hearing on the proposed budget and, following such hearing, shall adopt a budget by a two-thirds vote, incorporating such changes from the proposed budget as the regional school committee deems appropriate.

(h) After the adoption of the budget by the regional school committee, the treasurer of the regional school district shall calculate and certify the statutory

assessment for each member. Each such statutory assessment shall be the sum of the following amounts: (i) the member's required local contribution to the regional school district as determined by the Commissioner; (ii) the member's share of that portion of the regional school district's net school spending requirement, as defined by M.G.L. c.70, § 2, that exceeds the total required local contribution for all members, this share to be allocated pursuant to the assessment provisions of the regional agreement; and (iii) the member's share of costs for transportation, capital project debt service, other capital costs, and all other expenditures not included in the regional school district's net school spending requirement, this share to be allocated pursuant to the assessment provisions of the regional agreement.

(i) At the request of the mayor or board of selectmen of any member, the treasurer of the regional school district shall calculate an alternative assessment for each member. Such alternative assessment shall be calculated by adjusting the statutory assessment so that the total of the required local contributions of all the members are allocated pursuant to the assessment provisions of the regional agreement.

(j) The treasurer of the regional school district shall transmit the budget and the assessments to each member within 30 days after the school committee's adoption of the budget and, in any event, no later than April 30.

(2) Initial Action by the Local Appropriating Authorities

(a) The budget as adopted by the regional school committee and the member's assessment as certified by the treasurer of the regional school district, shall be placed before each local appropriating authority for its consideration. Notwithstanding provisions in the regional agreement to the contrary, approval of the operating budget for the regional school district shall require an affirmative vote of the appropriating authorities of two-thirds of the members. A vote by the local appropriating authority to appropriate the member's assessment shall constitute approval of the regional school district's budget.

(b) If a local appropriating authority votes to appropriate a lower amount than the assessment as certified by the treasurer of the regional school district, such vote shall not constitute approval of the budget as submitted by the regional school committee. The regional school committee may consider such votes when it reconsiders the budget pursuant to 603 CMR 41.05(3).

(c) Consideration of alternative assessments. If an alternative assessment is provided to the members pursuant to 603 CMR 41.05(1)(i), such alternative assessment shall also be placed before the local appropriating authority for its consideration, with the proviso that such alternative assessment is not effective unless approved by all members. If all members approve the alternative assessments and two-thirds of the members approve the statutory assessments, the

alternative assessments shall be used. Approval of alternative assessments shall be effective for that fiscal year only.

(3) Reconsideration of Rejected Budgets

(a) If the budget is not approved by two-thirds of the members, the regional school committee shall have 30 days from the date of disapproval by more than one-third of the members to reconsider, amend, and adopt a revised budget. With the approval of the Commissioner, this 30-day period may be extended an additional 15 days. Where the local appropriating authority is a town meeting and the annual town meeting is adjourned prior to voting on the budget, the budget shall be deemed disapproved by that member as of the date of such adjournment.

(b) The revised budget adopted by the regional school committee and the assessments corresponding to such budget may be less than, equal to, or greater than the amounts in the previously adopted budget.

(c) Within seven days following the regional school committee's adoption of a revised budget, the treasurer of the regional school district shall calculate and certify the assessment of each member pursuant to 603 CMR 41.05(1)(h) and (i) and shall transmit the assessments and a copy of the revised budget to the members. Each member's local appropriating authority shall have 45 days from the date of the regional school committee's vote to meet and consider the revised budget.

(d) If two-thirds of the members vote to approve the revised budget, the budget shall be deemed approved. If a local appropriating authority does not vote on the revised budget within the 45-day period and that local appropriating authority has previously appropriated funds for its assessment in an amount greater than or equal to the member's assessment for the revised budget, that member shall be deemed to have approved the revised budget.

(e) In a regional school district comprised of three or more members, if the revised budget is not approved by two-thirds of the members, the regional school committee shall again reconsider, amend, and adopt a revised budget. The revised budget shall be resubmitted to the members pursuant to the provisions of 603 CMR 41.05(3).

(f) In a regional school district comprised of two members, if the revised budget is not approved by both members, the regional school committee shall again reconsider, amend, and adopt a revised budget and shall convene a meeting of the regional school district, at which the revised budget shall be placed before all voters eligible to vote at said meeting. If a majority of voters at this meeting votes to approve the revised budget, such vote shall constitute approval. If a majority of voters at this meeting votes to approve a greater or lesser amount for the budget, such amount shall be placed before the regional school committee for

its ratification. If the regional school committee by a two-thirds vote ratifies this amount, it shall constitute approval. If the regional school committee rejects such greater or lesser amount, it shall again reconsider, amend, and adopt a revised budget and shall reconvene a regional school district meeting pursuant to the provisions of this paragraph.

(g) A meeting of the regional school district convened in accordance with 603 CMR 41.05(3)(f) shall only consider budgets based on the statutory assessments, as set forth in 603 CMR 41.05(1)(h), and may not consider alternative assessments as set forth in 603 CMR 41.05(1)(i).

(h) A regional school committee may reconsider, amend, and adopt a revised budget at any time prior to the approval of a previously adopted budget by two-thirds of the members or by a meeting of the regional school district.

(i) If a local appropriating authority votes to approve an adopted budget subsequent to the required date for such action but prior to the regional school committee's revision of the budget, such vote shall be deemed valid.

(j) Whenever a member's assessment is reduced to a smaller amount than previously appropriated by the local appropriating authority, that appropriation shall automatically be reduced to the lesser amount.

(4) Establishment of Budgets by the Commissioner

(a) If the operating budget for a regional school district has not been approved by July 1, the superintendent of schools shall notify the Commissioner, and the Commissioner shall establish an interim monthly budget for the regional school district. The interim monthly budget shall be one-twelfth of the regional school district's budget for the prior fiscal year or such higher amount as the Commissioner may determine. The interim monthly budget shall remain in effect until an operating budget is approved pursuant to 603 CMR 41.05(3) or December 1, whichever comes earlier.

(b) If a regional school district's budget has not been approved by December 1 of the fiscal year, the Commissioner shall assume control of the regional school district pursuant to M.G.L. c.71, § 16B, and shall establish the final budget for the fiscal year. The Commissioner's control shall continue through the end of the current fiscal year.

(c) Whenever the Commissioner establishes an interim or final budget for a regional school district under the provisions of this section, the treasurer of the regional school district shall calculate and certify to the members their respective assessments. Every member shall pay its respective assessment in accordance with the payment schedule in the regional agreement.

(5) Amendments to Approved Budgets

(a) A regional school committee may propose, with a two-thirds vote, an amendment to a previously approved budget. If such amendment results in an increase in the total amount of the budget or an increase in assessment for any member, such amendment shall be submitted to the local appropriating authorities for their approval. The treasurer of the regional school district shall submit the proposed amendment to the members within 7 days from the date of the regional school committee vote. The local appropriating authority of every member shall have 45 days from the date of the regional school committee's vote to meet and consider the amendment. The proposed amendment shall be effective if it is approved by two-thirds of the local appropriating authorities and by the local appropriating authority of any member whose assessment is increased.

(b) If a proposed amendment to a previously approved budget does not increase the total amount of the budget and reduces or leaves unchanged the assessment for every member, the amendment shall not require approval by the local appropriating authorities and shall be effective upon a two-thirds vote of the regional school committee.

(c) If the Commissioner adjusts the required local contribution of any member or members subsequent to the approval of the budget, the regional school committee shall propose an amendment to the budget to reflect such adjustments.

(d) Whenever a member's assessment is reduced to a smaller amount than previously appropriated by the local appropriating authority, the appropriation shall automatically be deemed to be reduced to such lesser amount.

(e) Transfers from one budget line item to another shall require and be effective upon approval of the regional school committee. Such approval shall be by a majority vote of the regional school committee unless otherwise specified in the regional agreement. Authority for such transfers may not be delegated.

(6) Changes to Budget upon Admission or Withdrawal of Members

(a) The treasurer of the regional school district shall include prospective members in the calculation of assessments for the fiscal year in which the members will be admitted. If such assessments are based upon enrollment in the prior fiscal year, the treasurer of the regional school district, with the approval of the Commissioner, shall estimate the enrollment to be used for prospective members. The local appropriating authorities of prospective members shall vote on the district budget for the fiscal year in which the members will be admitted and on the same terms and conditions as if they were a member.

(b) The treasurer of the regional school district shall exclude withdrawing members from the calculation of assessments for the fiscal year in which such

withdrawal will take place. The local appropriating authority of the withdrawing members shall not vote on the district budget for the fiscal year in which they will no longer be a member.

(7) Department Opinions. The regional school committee or the mayor or board of selectmen of a member may request that the Commissioner issue an opinion as to whether (a) the assessments of members have been calculated correctly; and (b) whether the budget of the regional school district has been approved in accordance with statutory and regulatory requirements.

(8) State Review. The Commissioner, in consultation with the Commissioner of Revenue, may request any regional school committee to submit its proposed budget for review prior to its adoption by the regional school committee. Upon such request, the regional school committee shall provide the Department within 7 days with a copy of its proposed budget and all other information as requested by the Commissioner. The regional school committee shall not vote on the adoption of the budget, and the treasurer of the regional school district shall not certify assessments to the members unless and until the Commissioner and the Commissioner of Revenue jointly determine that the proposed budget is in balance.

41.06: Excess and Deficiency Funds

(1) Every regional school district shall maintain an excess and deficiency fund on its books of account. At the end of every fiscal year, any surplus or deficit in the district's general fund shall be closed to the excess and deficiency fund.

(2) On or before October 31 of each year, every regional school district shall submit to the Department of Revenue the forms and schedules as the Department of Revenue requires for the purpose of reviewing and certifying the balance in the regional school district's excess and deficiency fund. At the discretion of the Commissioner, the Department may withhold release of all or some part of the quarterly state school aid for the regional school district if the regional school district has not filed the required forms and schedules by such date.

(3) A regional school committee may use all or part of the certified balance in the excess and deficiency fund as a revenue source for its proposed budget. If the certified balance exceeds five percent of the proposed budget, the regional school committee shall use the amount in excess of five percent as a revenue source for its proposed budget.

(4) No expenditures shall be made from the excess and deficiency fund except as approved in the regional school district's budget.